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PTO/SB/17p (09-06)

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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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**PETITION FEE  
Under 37 CFR 1.17(f), (g) & (h)  
TRANSMITTAL**  
(Fees are subject to annual revision)

Send completed form to: Commissioner for Patents  
P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	09/216,206
Filing Date	December 18, 1998
First Named Inventor	David W. Roth
Art Unit	3622
Examiner Name	
Attorney Docket Number	John W. Van Bramer

Enclosed is a petition filed under 37 CFR 1.183 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 400 is enclosed.

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(i), see form PTO/SB/17i.

**Payment of Fees** (small entity amounts are NOT available for the petition fees)

- The Commissioner is hereby authorized to charge the following fees to Deposit Account No. \_\_\_\_\_  
 petition fee under 37 CFR 1.17(f), (g) or (h)       any deficiency of fees and credit of any overpayments  
 Enclose a duplicative copy of this form for fee processing.
- Check in the amount of \$ \_\_\_\_\_ is enclosed.
- Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

**Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462**

For petitions filed under:

- § 1.36(a) - for revocation of a power of attorney by fewer than all applicants
- § 1.52(e) - to accord a filing date.
- § 1.57(a) - to accord a filing date.
- § 1.182 - for decision on a question not specifically provided for.
- § 1.183 - to suspend the rules
- § 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
- § 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

**Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463**

For petitions filed under:

- § 1.12 - for access to an assignment record.
- § 1.14 - for access to an application.
- § 1.47 - for filing by other than all the inventors or a person not the inventor.
- § 1.59 - for expungement of information.
- § 1.103(a) - to suspend action in an application.
- § 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
- § 1.295 - for review of refusal to publish a statutory invention registration.
- § 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
- § 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.550(c) - for patent owner requests for extension of time in *ex parte* reexamination proceedings.
- § 1.956 - for patent owner requests for extension of time in *inter partes* reexamination proceedings.
- § 5.12 - for expedited handling of a foreign filing license.
- § 5.15 - for changing the scope of a license.
- § 5.25 - for retroactive license.

**Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464**

For petitions filed under:

- § 1.19(g) - to request documents in a form other than that provided in this part.
- § 1.84 - for accepting color drawings or photographs.
- § 1.91 - for entry of a model or exhibit.
- § 1.102(d) - to make an application special.
- § 1.138(c) - to expressly abandon an application to avoid publication.
- § 1.313 - to withdraw an application from issue.
- § 1.314 - to defer issuance of a patent.

/Benzion A. Wachsman/

Signature

Benzion A. Wachsman

Typed or printed name

November 24, 2006

Date

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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NOV 24 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
David W. Roth et al.

Application No.: 09/216,206

Confirmation No.: 1079

Filed: December 18, 1998

Group Art Unit: 3622

For: INTERNET ADVERTISING SYSTEM

Examiner: John W. Van Bramer

**VIA FAX: (571) 273-8300**  
**ATTN: Office of Petitions**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 CFR § 1.183**  
**FOR SUSPENSION OF RULES**

Dear Sir:

This is a petition under 37 CFR § 1.183 for suspension of the Patent Rules of the Code of Federal Regulations ("Patent Rules"). The fee of § 1.17(f) is being concurrently paid. The rules the present petition seeks to suspend, include among others, § 1.32, § 3.71 and § 3.73, which relate to "Power of attorney", "Prosecution by assignee" and "Establishing the right of assignee to take action", respectively.

Certain assignments of ownership, relating to the present application, were subject to erratum, which may have affected their validity, and may have therefore caused incompliance with the Patent Rules. Further, certain assignments were previously not properly recorded with the U.S.P.T.O. The present petition seeks ratification of all past actions that were taken in prosecution of this application, notwithstanding any incompliance with the Patent Rules caused by the errors relating to the assignments.

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**Background**

The present application ("206 Application") was original filed on December 18, 1998, naming Heidi Kay and Russell Fraden as inventors. Kay and Fraden assigned the '206 Application and all inventions disclosed therein to Flycast Communication Corporation, a California corporation ("Flycast-CA"). The assignment was recorded with the U.S.P.T.O., a copy of which is attached hereto as Exhibit A. On April 30, 1999, Flycast-CA merged into Flycast Communications Corporation, a Delaware corporation, ("Flycast-DE"). Regrettably, the merger was not recorded with the U.S.P.T.O.

In January of 2000, Flycast-DE was acquired by Engage Technologies, Inc. On April 27, 2000, Engage Technologies, Inc. changed its name to Engage, Inc ("Engage").

On July 10, 2001, Flycast-DE executed an intra-company assignment, assigning the '206 Application to Engage. The assignment was recorded with the U.S.P.T.O, a copy of which is attached hereto as Exhibit B. Regrettably, the assignment incorrectly named Flycast-DE as "Flycast Communication Corporation, a California corporation", essentially the name of the company that had merged into Flycast-DE. Further, the assignment incorrectly named Engage with its prior name of Engage Technologies, Inc. The assignment was subject to other possible errors as well, such as failing to elaborate about the assignment of all "inventions disclosed in the application". The lack of conscientiousness in drafting the assignment was undoubtedly because of it being an intra-company transaction.

Separately, a different application relating to this petition, Application No. 09/787,979 ("979 Application"), naming David W. Roth, and Dylan F. Salisbury as inventors, was assigned to Orst, Inc. on January 20, 1997. The assignment was recorded with the U.S.P.T.O, a copy of which is attached hereto as Exhibit C. On April 8, 1997, Orst, Inc. changed its name to Flycast Communication Corporation (i.e. the aforementioned Flycast-CA). All inventions disclosed in the '979 Application were also included in the '206 Application.

On June 12, 2001, Flycast-DE assigned the '979 Application to Engage. The assignment was recorded with the U.S.P.T.O, a copy of which is attached hereto as Exhibit D. Regrettably, the assignment incorrectly named Flycast-DE as Orst, Inc., which as noted, was

the old name for Flycast-CA. The assignment was subject to other possible errors as well, such as failing to elaborate about the assignment of all "inventions disclosed in the application". The lack of conscientiousness in drafting the assignment was undoubtedly because of it being an intra-company transaction.

On February 20, 2003, Engage executed a Patent Purchase Agreement with BEH Investments LLC ("BEH"), pursuant to which Engage was required to assign all rights to the '979 Application (which had already issued into U.S. Patent No. 6,285,987) and '206 Application, and all inventions disclosed therein to BEH. Concurrent with the Patent Purchase Agreement, Engage executed an assignment of the '206 Application and '979 Application, and all inventions disclosed therein.

On June 19, 2003, Engage, and five of its subsidiaries, including Flycast-DE, filed for Chapter 11 Bankruptcy protection in the United States District Court of Massachusetts. Subsequently, Mr. Craig R. Jalbert was appointed Liquidating Supervisor of the consolidated estates of Engage and its subsidiaries.

On March 13, 2006, Messrs. Roth and Salisbury, the inventors of the '979 Application, were added as inventors to the '206 Application. This was a result of the inventions of Messrs. Roth and Salisbury being claimed in the '206 Application. The inventions of Roth and Salisbury claimed in the '206 Application were also disclosed in the '979 Application, and were as such, subject to the assignments relating to the '979 Application.

In and about May of 2006, a principal of BEH became aware of the errors in the assignments of the '206 Application and the '979 Application from Flycast-DE to Engage. BEH asked the Liquidating Supervisor to execute a conditional assignment, in order to remove any doubt about BEH's ownership in the inventions of the '206 Application and '979 Application. The Liquidating Supervisor executed such an assignment on June 14, 2006, and a supplemental assignment on July 12, 2006. The assignments were recorded with the U.S.P.T.O., copies of which are attached hereto as Exhibit E.

**Petition**

Because of the errors in the assignments, failure of Assignee to record certain assignment with the U.S.P.T.O., and failure of Assignee to file correct statements under § 3.73(b), the present application may have been in incompliance with the Patent Rules. In view of the extraordinary situation and in the spirit of justice, Petitioner respectfully petitions the Director to ratify, to the extent necessary, all prior actions of the present application, notwithstanding any incompliance with the Patent Rules.

Dated: November 24, 2006

Respectfully submitted,

/Benzion A. Wachsman/

Benzion A. Wachsman  
General Manager  
BEH Investments LLC \*  
Tel.: (718) 928-2213  
Fax: (718) 504-9671

\* a Statement under 37 CFR § 3.73(b)  
is being submitted herewith

# **EXHIBIT A**

## ASSIGNMENT

In consideration of good and valuable consideration, the receipt of which is hereby acknowledged, we the undersigned,

Heidi Kay whose address is 2025 Francisco Street, Apt. 1, Berkeley, CA 94709

Russell Fradin whose address is 3600 Fillmore St. Apt. 303, San Francisco, CA 94123

1. Hereby sell, assign and transfer to FLYCAST COMMUNICATIONS CORP., a corporation of California, having a place of business at 181 Fremont St., Suite 200, San Francisco, CA 94105, its successors, assigns and legal representatives, the entire right, title and interest for the United States and all foreign countries:

(a) in and to any and all inventions which are disclosed in the application for United States Letters Patent, which was executed by the undersigned and is:

Entitled: OPTIMIZED INTERNET ADVERTISING USING HISTORY TO SELECT SITES  
Date Executed: 12/14/98  
Docket Number: EWG-079

(b) in and to said application and all divisional, continuing, substitute, renewal, reissue, and all other applications for Letters Patent which have been or shall be filed in the United States and all foreign countries on any of said inventions; and (c) in and to all original and reissued patents which have been or shall be issued in the United States and all foreign countries on said inventions;

2. Agree that said Assignee may apply for and receive Letters Patent for said inventions in its own name; and that, when requested, (at the expense of said Assignee, its successors, assigns and legal representatives), the undersigned will execute all divisional, continuing, substitute, renewal, reissue, and all other patent applications on any and all said inventions; execute all rightful oaths, assignments, powers of attorney and other papers; communicate to said Assignee, its successors, assigns, and representatives, all facts known to the undersigned relating to said inventions and the history thereof; and generally do everything reasonable which said Assignee, its successors, assigns or representatives shall consider desirable for aiding in securing and maintaining proper patent protection for said inventions and for vesting title to said inventions and all applications for patents and all patents on said inventions, in said Assignee, its successors, assigns and legal representatives; and

3. Covenant with said Assignee, its successors, assigns and legal representatives that no assignment, grant, mortgage, license or other agreement affecting the rights and property herein conveyed has been made to others by the undersigned, and that full right to convey the same as herein expressed is possessed by the undersigned.

Date: 12/14/98

Signature: Heidi Kay  
Heidi Kay

Date: 12/14/98

Signature: Russell Fradin  
Russell Fradin

## **EXHIBIT B**

**ASSIGNMENT OF UNITED STATES PATENTS AND PATENT APPLICATIONS**

Whereas, Flycast Communications, a California corporation, having a place of business in 181 Fremont Street, Suite 200, San Francisco, CA 94107 (hereinafter "Assignor") is the sole owner of the entire right, title and interest in and to the United States Patent Application No. 09/216,206 (hereinafter "Patent") recorded at the United States Patent and Trademark Office at Reel 9682 and Frame 0336; and

Whereas, Engage Technologies, Inc., a Delaware corporation, having a place of business in 100 Brickstone Square, Andover, MA 01810 (hereinafter "Assignee") is desirous of acquiring the entire right, title and interest in and to the Patent.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor has sold, assigned and transferred, and by these presents does hereby sell, assign and transfer Assignor's entire right, title and interest in and to the Patent and all reissues and extensions thereof, including all claims, if any, which may have arisen for infringement of the patent prior to the date of this assignment, all said rights to be held and enjoyed by the Assignee for its own use and for the use of its successors, assigns or other legal representatives, to the full end of the term for which the patent has been or will be granted, extended or reissued, as fully and entirely as the same would have been held and enjoyed by the Assignor if this assignment and sale had not been made.

Assignor further agrees that Assignor will, without demanding any further consideration therefor, at the request but at the expense of Assignee, do all lawful and just acts, including the execution and acknowledgment of instruments, that may be or become necessary for obtaining, sustaining, or reissuing the Patent, and for maintaining and perfecting Assignee's right to the Patent.

IN WITNESS WHEREOF, Assignor has caused these presents to be signed by its duly authorized officer below named effective as of the date written below.

Mike Baker  
(Signature)

BY: Mike Baker  
(Print name of authorized person signing)

EVP  
(Title)  
Date: 7/10/01

8557829.1

## **EXHIBIT C**

## ASSIGNMENT

In consideration of good and valuable consideration, the receipt of which is hereby acknowledged, we the undersigned,

David William Roth

whose address is 3650 Fillmore St. #304, San Francisco, CA 94123, and

Dylan Salisbury

whose address is 2854 Golden Gate Ave., San Francisco, CA 94118

1. Hereby sell, assign and transfer to Orst Inc, a corporation of California, having a place of business at 123 Townsend St, Suite 226, San Francisco, CA 94107, its successors, assigns and legal representatives, the entire right, title and interest for the United States and all foreign countries:

(a) in and to any and all inventions which are disclosed in the application for United States Letters Patent, which was executed by the undersigned and is:

Entitled: Internet Advertising System

Date Executed: 20 Jan 1997

Docket Number: EWG-053

(b) in and to said application and all divisional, continuing, substitute, renewal, reissue, and all other applications for Letters Patent which have been or shall be filed in the United States and all foreign countries on any of said inventions; and (c) in and to all original and reissued patents which have been or shall be issued in the United States and all foreign countries on said inventions;

2. Agree that said Assignee may apply for and receive Letters Patent for said inventions in its own name; and that, when requested, (at the expense of said Assignee, its successors, assigns and legal representatives), the undersigned will execute all divisional, continuing, substitute, renewal, reissue, and all other patent applications on any and all said inventions; execute all rightful oaths, assignments, powers of attorney and other papers; communicate to said Assignee, its successors, assigns, and representatives, all facts known to the undersigned relating to said inventions and the history thereof; and generally do everything reasonable which said Assignee, its successors, assigns or representatives shall consider desirable for aiding in securing and maintaining proper patent protection for said inventions and for vesting title to said inventions and all applications for patents and all patents on said inventions, in said Assignee, its successors, assigns and legal representatives, and

3. Covenant with said Assignee, its successors, assigns and legal representatives that no assignment, grant, mortgage, license or other agreement affecting the rights and property herein conveyed has been made to others by the undersigned, and that full right to convey the same as herein expressed is possessed by the undersigned

Date: 20 Jan 97

Signature: David William Roth

David William Roth

Date: 20 Jan 97

Signature: Dylan Salisbury

Dylan Salisbury

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## **EXHIBIT D**

FLCT-P01-001

ASSIGNMENT OF UNITED STATES PATENTS AND PATENT APPLICATIONS

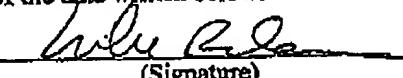
Whereas, Orst Inc. (aka Flycast Communications), a California corporation, having a place of business in 123 Townsend Street, Suite 226, San Francisco, CA 94107 (hereinafter "Assignor") is the sole owner of the entire right, title and interest in and to the United States Patent Application No. 08/787,979 (hereinafter "Patent"); and

Whereas, Engage Inc., a Delaware corporation, having a place of business in 100 Brickstone Square, Andover, MA 01810 (hereinafter "Assignee") is desirous of acquiring the entire right, title and interest in and to the Patent.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor has sold, assigned and transferred, and by these presents does hereby sell, assign and transfer Assignor's entire right, title and interest in and to the Patent and all reissues and extensions thereof, including all claims, if any, which may have arisen for infringement of the patent prior to the date of this assignment, all said rights to be held and enjoyed by the Assignee for its own use and for the use of its successors, assigns or other legal representatives, to the full end of the term for which the patent has been or will be granted, extended or reissued, as fully and entirely as the same would have been held and enjoyed by the Assignor if this assignment and sale had not been made.

Assignor further agrees that Assignor will, without demanding any further consideration therefor, at the request but at the expense of Assignee, do all lawful and just acts, including the execution and acknowledgment of instruments, that may be or become necessary for obtaining, sustaining, or reissuing the Patent, and for maintaining and perfecting Assignee's right to the Patent.

IN WITNESS WHEREOF, Assignor has caused these presents to be signed by its duly authorized officer below named effective as of the date written below.

  
(Signature)

BY: Mike Baker  
(Print name of authorized person signing)

SECRETARY, FLYCAST  
(Title)

Date: JUNE 12, 2001

8557829.1

PATENT  
REEL: 012084 FRAME: 0210

## **EXHIBIT E**

## ASSIGNMENT OF PATENT RIGHTS

This Agreement ("Agreement") is made and entered into by and between BEH Investments LLC, a Delaware limited liability corporation having an address at 1652 48<sup>th</sup> Street, Brooklyn, NY 11204, ("BEH") and Craig R. Jalbert, the Liquidating Supervisor (the "Liquidating Supervisor") of and on behalf of Engage, Inc., a Delaware corporation ("Engage") and five of its wholly owned domestic subsidiaries, which include among others, Flycast Communications Corporation, a Delaware corporation ("Flycast") (collectively the "Debtors"), the debtors and debtors in possession in the Chapter 11 bankruptcy cases styled *In re Engage, Inc., et al.*, Case Nos. 03-43655-JBR through 03-43657-JBR, 03-43659-JBR, 03-43661-JBR and 03-43662-JBR (the "Bankruptcy Cases"), pending in the United States Bankruptcy Court for the District of Massachusetts, Western Division (the "Bankruptcy Court").

WHEREAS, pursuant to an agreement dated June 12, 2001 (First '01 Assignment), Flycast assigned to Engage, all of Flycast's right, title and interest in and to United States Patent Application No. 08/787,979, now United States Patent No. 6,285,987 (the '987 Patent).

WHEREAS, pursuant to an agreement dated July 10, 2001 (Second '01 Assignment), Flycast assigned to Engage, all of Flycast's right, title and interest in and to United States Patent Application No. 09/216,206 (the "206 Application").

WHEREAS, pursuant to an agreement dated July 10, 2001 (Third '01 Assignment), Flycast assigned to Engage, all of Flycast's right, title and interest in and to United States Patent Application No. 09/372,416, (the "416 Application"). The '987 Patent, the '206 Application and the '416 Application are collectively referred to herein as the Patents.

WHEREAS, on or about February 20, 2003, Engage and BEH entered into a certain Patent Purchase Agreement and into a certain Assignment of Patent Rights (the "Patent Purchase Agreement" and the "'03 Assignment" respectively), pursuant to which, among other things, Engage assigned to BEH all of Engage's right, title and interest in and to the Patents and in and to all the inventions described therein;

WHEREAS, on or about June 19, 2003, the Debtors commenced the Bankruptcy Cases by filing voluntary petitions under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code");

WHEREAS, on May 20, 2004, the Bankruptcy Court entered a certain Order Confirming Debtors' Second Amended Plan Of Liquidation Under Chapter 11 of The Bankruptcy Code, Dated March 30, 2004, (the "Confirmation Order" and the "Plan" respectfully) pursuant to which, among other things, the Debtors' Bankruptcy Cases, upon effective date of the Plan, were deemed to be consolidated into a single proceeding, which as a result of such consolidation, all assets and liabilities of the Debtors are deemed to be merged, and any obligation of any of the Debtors is deemed to be one obligation of the consolidated Debtors;

WHEREAS, BEH has discovered an error in the First '01 Assignment, wherein Flycast was improperly named as "Orst, Inc., a California corporation" (Orst, Inc. was an old name for "Flycast Communications Corporation, a California corporation", which prior to the '01 Assignment had merged into "Flycast Communications Corporation, a Delaware corporation");

WHEREAS, BEH has further discovered an error in each of the Second '01 Assignment and Third '01 Assignment, wherein Flycast was improperly named as "Flycast Communications, a California corporation";

WHEREAS, the Liquidating Supervisor on behalf of the Debtors is desirous of abiding to and making fully affective the terms of the Patent Purchase Agreement;

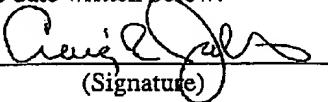
NOW THEREFORE, upon the foregoing premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Liquidating Supervisor hereby agrees and covenants to the following:

1. The Liquidating Supervisor for and on behalf of the Debtors and their consolidated estates, hereby acknowledges that Flycast was the assignor in the First '01 Assignment, the Second '01 Assignment and the Third '01 Assignment (collectively the "'01 Assignments), and that pursuant to the '01 Assignments, Flycast assigned to Engage all of Flycast's right, title and interest in and to the Patents.

2. To the extent any of the '01 Assignments is found or held to be void or unenforceable, or to the extent that notwithstanding the '01 Assignments, the Patent Purchase Agreement and the '03 Assignment, BEH is not deemed or held to be the owner of the entire right, title and interest in and to the Patents and in and to all the inventions disclosed therein, the Liquidating Supervisor for and on behalf of the Debtors and their consolidated estates, does hereby sell, assign, and transfer to BEH, and its successors and assigns, the entire right, title and interest in and to any and all inventions that are disclosed in the Patents and in and to all original and reissued patents that have been or shall be issued in the United States and all foreign countries on said inventions; and in and to all rights of priority resulting from the filing of said Patents, and, the Liquidating Supervisor for and on behalf of the Debtors and their consolidated estates, hereby agrees that BEH, and its successors and assigns, may apply for and receive a patent or patents for said inventions in its own name, and, the Liquidating Supervisor for and on behalf of the Debtors and their consolidated estates, hereby authorizes and requests the Commissioner for Patents to issue any and all Patents of the United States on said inventions to BEH as assignee of the entire interest.

3. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its choice of law rules.

In Witness Whereof, the Liquidating Supervisor has duly executed this Agreement as of the date written below.

  
(Signature)

By: Craig R. Jalbert, as Liquidating Supervisor,  
of Engage, Inc., et al.

Date 6/14/06

## ASSIGNMENT OF PATENT RIGHTS

This Agreement ("Agreement") is made and entered into by and between BEH Investments LLC, a Delaware limited liability corporation having an address at 1652 48<sup>th</sup> Street, Brooklyn, NY 11204, ("BEH") and Craig R. Jalbert, the Liquidating Supervisor (the "Liquidating Supervisor") of and on behalf of Engage, Inc., a Delaware corporation ("Engage") and five of its wholly owned domestic subsidiaries, which include among others, Flycast Communications Corporation, a Delaware corporation ("Flycast") (collectively the "Debtors"), the debtors and debtors in possession in the Chapter 11 bankruptcy cases styled *In re Engage, Inc., et al.*, Case Nos. 03-43655-JBR through 03-43657-JBR, 03-43659-JBR, 03-43661-JBR and 03-43662-JBR (the "Bankruptcy Cases"), pending in the United States Bankruptcy Court for the District of Massachusetts, Western Division (the "Bankruptcy Court").

WHEREAS, pursuant to an agreement dated June 12, 2001 ("First '01 Assignment"), Flycast assigned to Engage, all of Flycast's right, title and interest in and to United States Patent Application No. 08/787,979, now United States Patent No. 6,285,987 (the '987 Patent);

WHEREAS, pursuant to an agreement dated July 10, 2001 ("Second '01 Assignment"), Flycast assigned to Engage, all of Flycast's right, title and interest in and to United States Patent Application No. 09/216,206 (the "'206 Application");

WHEREAS, pursuant to an agreement dated July 10, 2001 ("Third '01 Assignment"), Flycast assigned to Engage, all of Flycast's right, title and interest in and to United States Patent Application No. 09/372,416, (the "'416 Application"). The '987 Patent, the '206 Application and the '416 Application are collectively referred to herein as the Patents;

WHEREAS, on or about February 20, 2003, Engage and BEH entered into a certain Patent Purchase Agreement and into a certain Assignment of Patent Rights (the "Patent Purchase Agreement" and the "'03 Assignment" respectively), pursuant to which, among other things, Engage assigned to BEH all of Engage's right, title and interest in and to the Patents and in and to all the inventions described therein;

WHEREAS, on or about June 19, 2003, the Debtors commenced the Bankruptcy Cases by filing voluntary petitions under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code");

WHEREAS, on May 20, 2004, the Bankruptcy Court entered a certain Order Confirming Debtors' Second Amended Plan Of Liquidation Under Chapter 11 of The Bankruptcy Code, Dated March 30, 2004, (the "Confirmation Order" and the "Plan" respectfully) pursuant to which, among other things, the Debtors' Bankruptcy Cases, upon effective date of the Plan, were deemed to be consolidated into a single proceeding, which as a result of such consolidation, all assets and liabilities of the Debtors are deemed to be merged, and any obligation of any of the Debtors is deemed to be one obligation of the consolidated Debtors;

WHEREAS, BEH has discovered an error in the First '01 Assignment, wherein Flycast was improperly named as "Orst, Inc., a California corporation" (Orst, Inc. was an old name for "Flycast Communications Corporation, a California corporation", which prior to the '01 Assignment had merged into "Flycast Communications Corporation, a Delaware corporation");

WHEREAS, BEH has further discovered an error in each of the Second '01 Assignment and Third '01 Assignment, wherein Flycast was improperly named as "Flycast Communications, a California corporation";

WHEREAS, on June 14, 2006, the Liquidating Supervisor executed a certain Assignment of Patent Rights ("'06 Assignment"), pursuant to which terms, all Patents and all inventions disclosed therein were assigned to BEH;

WHEREAS, the Liquidating Supervisor on behalf of the Debtors is desirous of making fully affective the intent of the Patent Purchase Agreement;

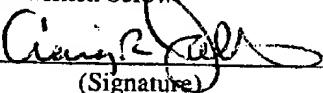
NOW THEREFORE, upon the foregoing premises and for further good and valuable consideration, the receipt of which is hereby acknowledged, the Liquidating Supervisor hereby agrees and covenants to the following:

1. The Liquidating Supervisor for and on behalf of the Debtors and their consolidated estates, hereby acknowledges that Flycast was the assignor in the First '01 Assignment, the Second '01 Assignment and the Third '01 Assignment (collectively the "'01 Assignments"), and that pursuant to the '01 Assignments, Flycast assigned to Engage all of Flycast's right, title and interest in and to the Patents.

2. To the extent any of the '01 Assignments and '06 Assignment is found or held to be void or unenforceable, or to the extent that notwithstanding the '01 Assignments, the Patent Purchase Agreement, the '03 Assignment and the '06 Assignment, BEH is not deemed or held to be the owner of the entire right, title and interest in and to the Patents and in and to all the inventions disclosed therein, the Liquidating Supervisor for and on behalf of the Debtors and their consolidated estates, does hereby sell, assign, and transfer to BEH, and its successors and assigns, the entire right, title and interest in and to any and all inventions that are disclosed in the Patents and in and to any and all original and reissued patents that have been or shall be issued in the United States and all foreign countries on said inventions; and in and to any and all rights of priority resulting from the filing of said Patents, and, the Liquidating Supervisor for and on behalf of the Debtors and their consolidated estates, hereby agrees that BEH, and its successors and assigns, may apply for and receive a patent or patents for said inventions in its own name, and, the Liquidating Supervisor for and on behalf of the Debtors and their consolidated estates, hereby authorizes and requests the Commissioner for Patents to issue any and all Patents of the United States on said inventions to BEH as assignee of the entire interest.

3. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its choice of law rules.

In Witness Whereof, the Liquidating Supervisor has duly executed this Agreement as of the date written below.

  
(Signature)

By: Craig R. Jalbert, as Liquidating Supervisor,  
of Engage, Inc., et al.

Date 7/12/06

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NOV 24 2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
David William Roth et al.

Application No.: 09/216,206

Confirmation No.: 1079

Filed: December 18, 1998

Group Art Unit: 3622

For: INTERNET ADVERTISING SYSTEM

Examiner: James W. Van Bramer

**STATEMENT UNDER 37 CFR § 3.73(b)**

BEH Investments LLC, a Delaware limited liability corporation, states that it is the assignee of the entire right, title and interest in the patent application identified above, by virtue of a chain of title from the inventor of the patent application identified above, to the current assignee as shown below:

1. From: David W. Roth, Dylan F. Salisbury To: Orst, Inc.  
The document was recorded in the United State Patent and Trademark Office at  
Real 008368, Frame 0113.
2. From: Orst, Inc. To: Flycast Communications Corp.  
The document was recorded in the United State Patent and Trademark Office at  
Real 009836, Frame 0118.
3. From: Flycast Communications Corporation (a California corporation)  
To: Flycast Communications Corporation (a Delaware corporation)  
The document was recorded in the United State Patent and Trademark Office at  
Real 017811, Frame 0238.
4. From: Orst, Inc. To: Engage, Inc.  
The document was recorded in the United State Patent and Trademark Office at  
Real 011903, Frame 0079.
5. From: Engage, Inc. To: BEH Investments LLC  
The document was recorded in the United State Patent and Trademark Office at  
Real 013895, Frame 0778.
6. From: Craig R. Jalbert, Liquidating Supervisor To: BEH Investments LLC  
The document was recorded in the United State Patent and Trademark Office at  
Real 018535, Frame 0073.

The undersigned is duly authorized to act on behalf of Assignee.

Dated: November 24, 2006

Respectfully submitted,  
Signature: /Benzion A. Wachsman/  
Benzion A. Wachsman  
General Manager  
(718) 928-2213